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Southern California Food Distributors, Inc. a/k/a Southern California Freight Forwarders and F & F Distributing and Wholesale and Retail Food Distribution, Local 63, International Brotherhood of Teamsters, AFL-CIO. Case 21-CA-30104

December 12, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Upon a charge filed by Wholesale and Retail Food Distribution, Local 63, International Brotherhood of Teamsters, AFL-CIO, the Union, on June 8, 1994, the General Counsel of the National Labor Relations Board issued a complaint and an amendment to complaint on August 9 and October 14, 1994, respectively, alleging that Southern California Food Distributors, Inc. a/k/a Southern California Freight Forwarders and F & F Distributing, the Respondent, has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, complaint, and amendment, the Respondent failed to file an answer.

On November 14, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On November 17, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 28, 1994, notified the Respondent that unless an answer were received by November 4, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, with an office and place of business in South Gate, California, has been engaged in the distribution of wholesale frozen foods. During the 12-month period preceding issuance of the complaint, the Respondent sold and shipped from its South Gate, California facility goods valued in excess of \$50,000 to points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All local and line drivers, loaders and freezer employees employed by the Employer at its facility located at 9821 California Avenue, South Gate, California; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since December 11, 1992, and all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, which is effective from December 11, 1992, to December 12, 1996.

At all times since December 11, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about November 1993, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement by its failure to pay health and welfare benefits to the Teamsters Miscellaneous Security Trust Fund. The Union first became aware of the Respondent's above conduct by letter dated April 15, 1994, from the Trust Fund administrator.

Although the terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct described above without the Union's consent.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. December 12, 1994

William B. Gould IV, Chairman

James M. Stephens, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Wholesale and Retail Food Distribution, Local 63, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bar-

gaining representative our employees in the unit described below by failing and refusing to make payments for health and welfare benefits to the Teamsters Miscellaneous Security Trust Fund:

All local line drivers, loaders and freezer employees employed by us at our facility located at 9821 California Avenue, South Gate, California; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all contractually required payments for health and welfare benefits to the Teamsters Miscellaneous Security Trust Fund retroactive to November 1993, including any additional amounts due the Fund.

WE WILL make whole the unit employees for any loss of benefits and expenses incurred as a result of our failure to make all contractually required payments for health and welfare benefits to the Teamsters Miscellaneous Security Trust Fund since November 1993, with interest.

SOUTHERN CALIFORNIA FOOD DISTRIBUTORS, INC. A/K/A SOUTHERN CALIFORNIA FREIGHT FORWARDERS AND F & F DISTRIBUTING